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The Politics of Human Rights: Beyond the Abolitionist Paradigm in Africa

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THE POLITICS OF HUMAN RIGHTS: BEYOND THE ABOLITIONIST PARADIGM IN AFRICA

CLAUDE E. WELCH, PROTECTING HUMAN RIGHTS IN AFRICA: STRATEGIES AND ROLES OF NON-GOVERNMENTAL ORGANIZATIONS. Philadelphia: University of Pennsylvania Press, 1995. xiii + 356 pp.

*Reviewed by Makau wa Mutua**

INTRODUCTION

Over the last decade, the subject of human rights in Africa has become highly topical in the West primarily because of the emphasis placed by the industrial democracies on the postwar formulation of human rights and the universalization of its norms.[1] Both the United States[2] and the European Union[3] have built human rights considerations into their foreign policy frameworks. But the stuff of rights animated Africans long before the eruption of this spate of Western interest.[4] Struggles against colonial rule and current efforts to democratize the African post-colonial state form the unbroken chain of the quest for just

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1. Henkin, one of the leading academics and writers on human rights, has expressed his belief about the importance of human rights by declaring that "[o]urs is the age of rights." LOUIS HENKIN, THE AGE OF RIGHTS ix (1990). For him, "[h]uman rights is the idea of our time, the only political-moral idea that has received universal acceptance." *Id.* Alston, another prominent academic and advocate of human rights, has argued that the designation of a concern as a human right "elevates it above the rank and file of competing societal goals" and provides it with "an aura of timelessness, absoluteness and universal validity." Philip Alston, *Making Space for New Human Rights: The Case of the Right to Development*, 1 HARV. HUM. RTS. Y.B. 3, 3 (1988).

2. For United States policies on human rights, see AMERICAN ASS'N FOR THE INT'L COMM'N OF JURISTS, HUMAN RIGHTS AND U.S. FOREIGN POLICY (1984); LAWYERS COMM. FOR HUMAN RIGHTS, 1988 PROJECT: HUMAN RIGHTS AND U.S. FOREIGN POLICY (1988).

3. For European Union human rights policies, see Demetrios J. Marantis, *Human Rights, Democracy, and Development: The European Community Model*, 7 HARV. HUM. RTS. J. 1 (1994).

4. For discussions of pre-colonial African conceptions of rights, see HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES (Abdullahi Ahmed An-Na'im & Francis M. Deng eds., 1990) [hereinafter CROSS-CULTURAL PERSPECTIVES]; Makau wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L L. 339 (1995) [hereinafter Mutua, *Cultural Fingerprint*]; Timothy Fernyhough, *Human Rights and Precolonial Africa*, in HUMAN RIGHTS AND GOVERNANCE IN AFRICA 39 (Ronald Cohen et al. eds., 1993).

societies. Claude Welch's important work[5] explores this historical continuum and analyzes the collusion of both African and external agencies in their attempts to rationalize the state and subject it to the interests of the governed through the norms of the international law of human rights.

Since the late 1980s, Africa has undergone two contradictory processes of political transformation. Many countries have witnessed the succession of one–party states and military dictatorships by forms of government born out of varying degrees of open political competition, while in others the fragmentation of political elites has led to state collapse.[6] These protracted problems of the post–colonial African state have again raised questions about its viability.[7] Analyses that purport to treat in any serious manner the crises that wrack most of Africa must therefore address the foundational characteristics of the post–colonial state and attempt to explain the seemingly permanent disjuncture between the state and its subjects. *Protecting Human Rights in Africa* is the first significant scholarly work to closely examine the roles and strategies of non–governmental human rights organizations (NGOs) in Africa. It is questionable, however, whether Welch's work pays adequate attention to the nature of the post–colonial state and how its unique character has made the quest for democracy and human rights elusive.

One source of difficulty stems from the two critical and limiting geographic and non–thematic choices that Welch makes at the outset.

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5. CLAUDE E. WELCH, JR., PROTECTING HUMAN RIGHTS IN AFRICA: STRATEGIES AND ROLES OF NON–GOVERNMENTAL ORGANIZATIONS (1995). Welch, a leading American Africanist, is professor of political science and co–director of the Human Rights Center at the State University of New York at Buffalo. He is chair of the African Studies Association Human Rights Committee and has been a member of the board of directors, renamed the advisory committee, of Human Rights Watch/Africa since its founding in 1988. His writings in human rights include: HUMAN RIGHTS AND DEVELOPMENT IN AFRICA (Claude E. Welch, Jr. & Ronald I. Meltzer eds., 1984); *The African Commission on Human and Peoples' Rights: A Five–Year Report and Assessment*, 14 HUM. RTS. Q. 43 (1992); *Human Rights and African Women: A Comparison of Protection Under Two Major Treaties*, 15 HUM. RTS. Q. 549 (1993); *The Organisation of African Unity and the Promotion of Human Rights*, 29 J. MOD. AFR. STUD. 535 (1991).

6. *See* Ali A. Mazrui, *The African State as a Political Refugee: Institutional Collapse and Human Displacement*, INT'L J. REFUGEE L., Summer 1995, at 21 (1995) (Special Issue); Makau wa Mutua, *Democracy in Africa: No Easy Walk to Freedom*, 2 RECONSTRUCTION 39 (1992); *see generally* 30 YEARS OF INDEPENDENCE IN AFRICA: THE LOST DECADES? (Peter Anyang' Nyong'o ed., 1992).

7. *See, e.g.*, COLLAPSED STATES: THE DISINTEGRATION AND RESTORATION OF LEGITIMATE AUTHORITY (I. William Zartman ed., 1995) [hereinafter COLLAPSED STATES]; Makau wa Mutua, *Putting Humpty Dumpty Back Together Again: The Dilemmas of the Post-Colonial African State*, 21 BROOK. J. INT'L L. 505 (1995) (book review); Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 MICH. J. INT'L L. 1113 (1995) [hereinafter Mutua, *Redraw the Map*].

For analytical purposes he accepts, without discussion, the traditional Africanist North Africa/sub–Saharan bifurcation. This schism, which reflects the conventional Western division of Africa into "African" and "Arabic," is of questionable merit in a discussion about human rights NGOs and Africa. The separation most likely reflects Welch's own geographic specialization; there is little evidence to suggest that human rights NGOs ought to be treated differently on either side of the "divide," although similar issues mark the two political landscapes: authoritarian regimes, weak civil societies, and the parallel existence of and frictions between European legal systems and norms on the one hand and Islamic and African heritages and values on the other.[8] Significantly, the Organization of African Unity (OAU) did not acknowledge this customary dichotomy in its creation of the African regional human rights system: the continent's human rights treaty covers the whole of geographical Africa.[9]

Secondly, Welch picks four countries — Ethiopia, Namibia, Nigeria, and Senegal — and uses their histories with NGOs to draw lessons and conclusions about the entire sub–Saharan region.[10] The histories of most African states are similar — generally involving European colonization,[11] despotic post–colonial states, and underdeveloped social,

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8. For an illuminating history of the admixture and frictions among African, European, and Arabic or Islamic traditions in Africa, see ALI A. MAZRUI, THE AFRICANS: A TRIPLE HERITAGE (1986).

9. *See* African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), *reprinted in* 21 I.L.M. 59 (1982) [hereinafter African Charter]. The African Charter, which is also known as the Banjul Charter, was adopted in 1981 by the Eighteenth Assembly of Heads of State and Government of the OAU, the official body of African states, in Nairobi, Kenya. The African Charter's implementing body, the African Commission on Human and Peoples' Rights, was established in 1987. Its members, who are known as commissioners, are elected by the Assembly of Heads of State and Government of the OAU by secret ballot for a six year term and serve in their personal capacities. *See id.*, arts. 31, 33, 36, 45. As of 1993, three of the eleven commissioners came from north Africa (Egypt, Libya, and Tunisia), the rest from sub–Saharan states. *See* 2 REVIEW OF THE AFRICAN COMM'N ON HUMAN AND PEOPLES' RIGHTS iii (1994); *see also* WELCH, *supra* note 6, at 173.

10. WELCH, *supra* note 5, at 5–6. He argues that these countries "represent a broad spectrum of issues and contexts." *Id.* at 5. He contends that their political histories, rhetorical commitments to human rights and democracy, and their demographic and social fabrics "represent much of the spectrum of contemporary Africa, historically, socially, economically, and politically." *Id.* Evidence from the four "can be used as the basis for understanding sub–Saharan Africa as a whole." *Id.*

11. Ethiopia was the only African state to escape European colonization, although it was briefly occupied by Italy from 1936 to 1941. *See* IAN BROWNLIE, AFRICAN BOUNDARIES: A LEGAL AND DIPLOMATIC ENCYCLOPAEDIA 775 (1979). Liberia, another African state that was not a colony technically, was created through the repatriation of freed Africans (primarily former U.S. slaves) and the imposition of their rulership over indigenous Africans in the area. *See* SANFORD J. UNGAR, AFRICA: THE PEOPLE AND POLITICS OF AN EMERGING CONTINENT 89–93 (1985).

Michigan Journal of International Law   [Vol. 17:591]

economic, and civil society sectors. Thus, in terms of human rights questions, any four countries are likely to yield some generalizable characteristics. However, care should be taken not project them as a mirror for the whole region. The distinctive qualities of any four particular countries belie these similarities and make such paradigmatic selections risky. In particular, Welch's choices appear to have been primarily influenced by his interests and focus: the pivotal nature and potential of complex and populous Nigeria, the perceived successes of newly-independent Namibia, Senegal's "leadership" in human rights,[12] and his own optimistic evaluation of post–Marxist Ethiopia. In other words, Welch chose his representative countries for their uniqueness rather than their typicalness.

Several other assumptions underlie Welch's approach to the construction of viable and just societies in Africa. Central among these is the key role that he assigns to both domestic human rights NGOs and international NGOs (INGOs); he sees the two as working in choreographed harmony to imbue Africans with Western liberal values as epitomized by what he calls a "human rights culture"[13] and "the rule of law."[14] Welch dubs the 1990s as the decade of the "civil society,"[15] the social sector that he deems critical to Africa's future. Within this sector, as Welch notes, NGOs form a special category because they differ in principles, membership, and goals from families and other ascriptive

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12. As Welch correctly notes, Senegalese scholars and activists, led by Keba Mbaye, were instrumental in the creation of the African human rights system. The heads of Amnesty International, the International Commission of Jurists (ICJ), and the Assistant Secretary-General of the United Nations Centre for Human Rights are among the many Senegalese who occupy important international human rights portfolios. *See* WELCH, *supra* note 5, at 164. Welch also gives due credit to the efforts of Adama Dieng, the head of ICJ, in working with African NGOs and the African Commission on Human and Peoples' Rights, to utilize the strategy of "enforcement" and seek out more effective use of the reporting and individual complaint mechanism of the African human rights system. *See* African Charter, *supra* note 9, arts. 45, 46, 47, 55; *see also* WELCH, *supra* note 5, at 140–78 (discussing the work of the ICJ and the African Commission).

Senegal is somewhat atypical because together with Botswana, it was the only African country to enjoy a formal multiparty democratic system during the Cold War. In reality, however, neither allowed real competition or the possibility of defeat to the ruling party. *See* Patrick P. Molutsi, *Botswana's Democracy: Past and Future Strategies*, AFRICA DEMOS, Mar. 1995, at 17; *see also* SAMUEL P. HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY 11–12 (1991).

13. WELCH, *supra* note 5, at 52.

14. *Id.* at 179.

15. *Id.* at 42. He argues that the emphasis on statist paradigms — strong centralized states, leading political figures, and urban areas — in the first three decades of African independence exposed shortcomings as states failed to meet the expectations of the people. *Id.* As a result, the focus in the 1990s has shifted to the "grassroots," the civil society, which is expected ·to tame the despotic state and help release the energies of citizens to reverse Africa's downward spiral. *Id.*

groups; they do not involve themselves directly in markets and are distinct from government institutions although they interact with the state.[16] According to Welch, human rights NGOs occupy an even more hallowed plane:

> They [human rights NGOs] seek to benefit society, or at least a significant portion of it, without necessary direct benefit to themselves. They constitute both a precondition for, and a supplement to, the constitutionally defined political process and the formal political bodies of the democratic state. As voluntary organizations in large measure, they often pursue idealistic causes. But these causes are crucial to the functioning of a modern society.[17]

As one of the many competing political forces in society, do NGOs and what Welch calls the "NGO revolution"[18] deserve such reverence? Welch's first two chapters, which contextualize the often serious human rights problems in the four selected countries, cast human rights NGOs as saviors. Welch identifies six basic strategies that he believes NGOs utilize to improve the lives of individuals and groups and answers that question in the affirmative.[19] Each of the six strategies — education, empowerment, enforcement, documentation, democratization, and development — is the basis of a chapter in *Protecting Human Rights in Africa*. In each, Welch focuses on particular states and NGOs and attempts to explain how the strategy works; he analyzes issues that arise in pursuit of the strategy, collaboration with other entities (domestic and international), and evaluates the status of the project. The last chapter is devoted to the celebration of the human rights NGO, although it also assesses resource constraints, organizational difficulties, interference by the state, and consequences of external funding.

In this review, I critically examine the meaning of what Welch calls the "NGO revolution" in the area of human rights in Africa and assess the claims that he makes against the political and social problems that the continent continues to face. I probe in particular the purposes and methodologies of the international human rights project and seek its relevance to Africa. The questions I pose[20] include: the character of the

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16. *Id.* at 44.

17. *Id.* (footnote omitted).

18. *Id.* at 45.

19. In the conclusion of his book, Welch elucidates his belief in the centrality of human rights NGOs. *See* WELCH, *supra* note 5, at 284–317.

20. I briefly explored some of the difficulties I discuss here in an earlier piece. *See* Makau wa Mutua, *Domestic Human Rights Organizations in Africa: Problems and Perspectives*, 22 ISSUE 30 (1994) [hereinafter Mutua, *Domestic NGOs*].

values and programs advocated by Welch and other believers of universal human rights discourse; the tensions between the particularities of cultural Africa and the global liberal agenda of human rights; the often-competing roles of Africans and non-Africans in the struggle against human rights problems; and the viability of the post-colonial state in the reconstruction of African societies.

In Part I of this review, I probe the historical and cultural bases for the human rights corpus, and attempt to demonstrate the "ideological" character of that corpus. This critique of human rights norms, which Welch does not explicitly address, seeks to situate the "political" context in which *Protecting Human Rights in Africa* examines the spread of a "human rights culture." In Part II, I critically explore the strategies employed by human rights NGOs in the diffusion of Western liberal values. In particular, I examine the tensions within the movement between African NGOs and their "friends" in the North and the implications of those tensions to the creation of a viable NGO community in Africa. Finally, I evaluate the basic mission of human rights NGOs in view of the problems of the viability of the African post-colonial state.

I. CULTURAL BIAS AND THE LIBERAL PROJECT

The principal purpose of *Protecting Human Rights in Africa* appears not to have been a probing exploration of philosophical and cultural tensions that mark the human rights enterprise. Rather, Welch takes as a given the normative superiority of the human rights corpus over other moral and rights claims and other traditions that stand outside that corpus. He draws a rigid and sharp contrast between the human rights regime on the one hand and "traditional" and "non-Western" norms and practices on the other. From this basic premise, he treats as an irritation any suggestions that have the potential to detract from the "universality" of human rights — hence, the cursory and perfunctory look that he gives the controversy. His celebration of universality and dismissal of countervailing arguments are unremitting:

> The "international bill of rights" had its origins in the West, but it is not an unmitigated imposition of alien values on other societies. The Universal Declaration of Human Rights is now far more global in its reach and recognition . . . . The once-flourishing academic enterprise of ferreting out human rights protection in "traditional" African cultures and of arguing there was no need for even the modest claims of the African Charter on Human and Peoples' Rights has shriveled, though not disappeared. I regard the muting of debate over the source and content of rights as a significant

advance. In a sense, the relative silence over domestic sovereignty and cultural relativism is eloquent testimony to the spread of universal human rights ideals.[21]

Welch's view, which seems to treat with suspicion any non–Western critique of human rights, particularly as to its content, cultural relevance, and ranking of rights, is dominant among Western scholars and activists. Contrary to this view — I concede here the rhetorical acceptance of human rights norms by states of all major cultural blocs and traditions — the most vocal debates in human rights today rage over the cultural basis[22] for human rights; their ideological and political dimensions and deployment;[23] and thematic incompleteness.[24] Some leading Western advocates of human rights have conceded openly that the West "imposed" its own philosophy of human rights on the rest of the world.[25] It is therefore somewhat surprising for Welch, who has substantial knowledge of Africa and is regarded as an authority, to show reluctance to validate this debate.[26]

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21. WELCH, *supra* note 5, at 289.

22. For discussions about cultural dimensions and tensions in human rights, see HUMAN RIGHTS IN CROSS–CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS (Abdullahi Ahmed An–Na'im ed., 1992) [hereinafter HUMAN RIGHTS]; CROSS–CULTURAL PERSPECTIVES, *supra* note 4; JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (1989); HUMAN RIGHTS: CULTURAL AND IDEOLOGICAL PERSPECTIVES (Adamantia Pollis & Peter Schwab eds., 1979); Raimundo Panikkar, *Is the Notion of Human Rights a Western Concept?*, DIOGENES, Winter 1982, at 75.

23. *See, e.g.*, Bilahari Kausikan, *Asia's Different Standard*, 92 FOREIGN POL'Y 24 (1992); Thomas Carothers, *Enlarging Democracy: Democracy and Human Rights*, CURRENT, Nov. 1994, at 17; *see also* CHANDRA MUZAFFAR, HUMAN RIGHTS AND THE NEW WORLD ORDER (1993); Henry J. Richardson III, Book Review, 88 AM. J. INT'L L. 852 (1994) (reviewing CHANDRA MUZAFFAR, HUMAN RIGHTS AND THE NEW WORLD ORDER (1993)).

24. *See, e.g.*, ERIC HEINZE, SEXUAL ORIENTATION: A HUMAN RIGHT (1994); Karen Engle, *International Human Rights and Feminism: When Discourses Meet*, 13 MICH. J. INT'L L. 517 (1992); Melissa Thorme, *Establishing Environment as a Human Right*, 19 DENV. J. INT'L L. & POL'Y 301 (1991).

25. *See* Antonio Cassese, *The General Assembly: Historical Perspectives 1945–1989*, in THE UNITED NATIONS AND HUMAN RIGHTS 26, 31 (Philip Alston ed., 1992) [hereinafter UNITED NATIONS AND HUMAN RIGHTS]; *see also* Virginia Leary, *The Effect of Western Perspectives on International Human Rights*, in CROSS–CULTURAL PERSPECTIVES, *supra* note 4, at 15.

26. Welch briefly discusses the conflict between cultural relativism and universalism in relation to the narrow mandate of Human Rights Watch (HRW), the largest American based INGO, and the credibility of its work in Africa. HRW focuses exclusively on civil and political rights, or so–called first generation rights. He discusses this tension in the context of Abdullahi Ahmed An–Na'im, the executive director of HRW/Africa from 1993 to 1995 and now a professor at Emory University School of Law. An–Na'im, a Sudanese Islamic scholar, has written extensively on human rights and Islam from a reformist perspective. Although a firm believer in the need for universality, An–Na'im thinks that cultural legitimacy is necessary in the construction of a viable human rights corpus. *See* WELCH, *supra* note 5, at 221.

The quest for an international consensus on human rights is likely to be rendered more elusive by insistence on the part of Western academics and activists that the essentially European formulation of human rights trumps all other non–Western conceptions of the relationships among individuals, the community, and the state. Rather than launch immediately into discussions about the internationalization of human rights norms through NGOs, Welch could have presaged his work with analyses of the meaning of the "culture of rights" crusade,[27] the tensions that attend that project, and the merits and demerits of opposing views. An understanding of the origin, purpose, and political character of the human rights movement is therefore essential in forming views about their utility in the African context.

Although the human rights corpus did not spring into being until after World War II, its philosophical foundations had been under evolution over several centuries in Europe and the United States. As Donnelly has correctly argued, conceptions of individual rights against the state, the pivot of the human rights regime, are traceable to the roots of liberalism and its early thinkers.[28] The more "radical" strand of liberalism limits emphasis on the individual and stresses a more social vision, but it is the conventional strand's individualism that has dominated the formulation of the human rights corpus.[29]

This individualist focus, which emphasizes civil and political rights and utilizes the "negative" or hands–off claims against the state, is espoused by the Universal Declaration of Human Rights (UDHR)[30] and the International Covenant on Civil and Political Rights (ICCPR),[31] which are generally regarded as the two most important human rights

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He has noted, for example, that "the merits of a reasonable degree of cultural relativism are obvious, especially when compared to claims of universalism that are in fact based on the claimant's rigid and exclusive ethnocentricity." Abdullahi Ahmed An–Na'im, *Toward a Cross–Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment, in* HUMAN RIGHTS, *supra* note 22, at 19, 25.

27. Recognition of the possible limits of the human rights project is essential given the critiques of earlier Western crusades, such as the law and development movement of the 1960s and 1970s. That movement, which was not dissimilar from the "rule of law" emphasis of the human rights movement, emphasized the use of law as a tool for social change.

28. *See generally* Jack Donnelly, *Human Rights and Western Liberalism, in* CROSS–CULTURAL PERSPECTIVES, *supra* note 4, at 31.

29. *Id.* at 33; *see also* Mutua, *supra* note 4, at 341.

30. Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. GAOR, 3d Sess., 183d mtg. at 71, U.N. Doc. A/810 (1948) [hereinafter UDHR].

31. International Covenant on Civil and Political Rights, Dec. 19, 1966, S. TREATY DOC. No. 2, 95th Cong., 1st Sess. (1977), 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter ICCPR].

instruments.[32] The UDHR occupies a commanding station in human rights law[33] in spite of its animation by distinctly European philosophical constructs.[34] These two instruments attempt the universalization of civil and political rights, the basic freedoms on which Western liberal democracies are founded. Group rights — such as the right to development[35] or economic, social, and cultural rights — form an essential part of the corpus of human rights, but they belong to a lower order in terms of their rhetorical importance, scholarly prominence, and activist emphasis.[36] Despite the protection of some economic, social, and cultural rights by the UDHR[37] and the recognition by the ICCPR of the group right to self–determination,[38] this class of rights is not the focus of activist or scholarly emphasis. As a result, these rights remain highly underdeveloped and subordinated to the individualist idiom of human rights discourse.[39]

In this review, I argue that most Western human rights advocates and scholars, including Welch, consciously or unconsciously see democ-

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32. Steiner calls the UDHR the "spiritual parent" of many of the human rights treaties. Henry J. Steiner, *Political Participation as a Human Right*, 1 HARV. HUM. RTS. Y.B. 77, 79 (1988).

33. The UDHR was adopted by a vote of 48 to 0 with 8 abstentions. At the time, the United Nations was dominated by the West because Africa and most of Asia were colonies. *See* Cassese, *supra* note 25, at 31.

34. As Henkin, one of the leading American scholars on the subject, notes:

International human rights derive from natural rights theories and systems, harking back through English, American, and French constitutionalism to John Locke et al., and earlier natural rights and natural law theory. In its American version, that constitutionalism included concepts of original individual autonomy translated into popular sovereignty; of a social compact providing for continued self–government through accountable representatives; of limited government for limited purposes; and retained, inalienable, individual rights.

HENKIN, *supra* note 1, at 6 (citation omitted).

35. The United Nations General Assembly recognized the right to development in 1987. *See* Declaration on the Right to Development, G.A. Res. 128, U.N. GAOR, 41st Sess., U.N. Doc. A/41/128 (1987). The right to development was highly influenced and popularized by Keba Mbaye, the Senegalese jurist. *See* WELCH, *supra* note 5, at 274.

36. These "lower" rights are the subject of the International Covenant on Economic, Social and Cultural Rights, the third of the three human instruments that form the so–called "international bill of rights." *See* International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 [hereinafter ICESCR].

37. *See* UDHR, *supra* note 30, arts. 22–29.

38. The ICCPR and ICESCR have an identical article one, which recognizes the right to self–determination. *See* ICCPR, *supra* note 31, art. 1; ICESCR, *supra* note 36, art. 1.

39. Alston has correctly noted that with the exception of some labor–related rights, second and third generation rights — such as the right to education, health, food, and environment — are normatively underdeveloped because, unlike civil and political human rights, they are not based on any significant body of jurisprudence. Such jurisprudence is sketchy at best. *See* Philip Alston, *The Committee on Economic, Social and Cultural Rights*, in UNITED NATIONS AND HUMAN RIGHTS, *supra* note 25, at 473, 490.

racy as the only political system in which human rights norms are readily realizable. As a consequence, many see the establishment of Western–style institutions and structures as indispensable to the rule of law and respect for human rights. Thus, these scholars advocate the need for competitive political systems, media free of government constraints, autonomous citizens' groups and professional and trade associations, legal systems anchored in an independent judiciary, and free-market organizational structures if human rights goals are to be realized. This view, I contend, is the deliberate or unwitting political agenda of the human rights movement. Like many other human rights advocates, Welch does not explicitly subscribe to this line of thinking, but the societal arrangements that he proposes and the roles that he carves out for human rights NGOs fit this pattern.

Henkin has argued that the human rights corpus requires no particular form of government and does not advance any "comprehensive political theory."[40] But he concedes that "the idea of rights reflected in the instruments [i.e., human rights], the particular rights recognized, and the consequent responsibilities for political societies, imply particular political ideas and moral principles."[41] I agree with Henkin that the corpus does not dictate the exact form of government a state must take, but I believe that read as a whole, human rights law requires variations of liberal democracy. The political participation clause of the ICCPR seems to point in this direction: it gives every citizen the right "[t]o vote and be elected at genuine periodic elections" through "universal and equal suffrage" and by "secret ballot" to "guarantee[] the free expression of the will of the electors."[42] Steiner's pioneering article on the right to political participation analyzed in depth the meaning of this provision in the context of diverse political systems. He concluded that while the provision did not impose a particular ideology, the open political democracies of the industrial states seemed best suited for achieving its political participation goals.[43]

Political participation, as envisaged in the human rights instruments, requires the guarantee of other freedoms such as the right to assemble, associate, and disseminate ideas.[44] These guarantees appear to imply a typology of government that allows open political competition for office and a free press. As Steiner has forcefully stated, "these participatory

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40. HENKIN, *supra* note 1, at 6.
41. *Id.* at 7.
42. ICCPR, *supra* note 31, art. 25(b).
43. *See generally* Steiner, *supra* note 32.
44. ICCPR, *supra* note 31, arts. 18, 19, 21, 22, 25.

norms clearly rule out the forceful imposition of any one ideology."[45]
He concludes that:

> They [participatory norms] rule out such forms of government as
> dictatorships and inherited leadership. Most one–party states
> would violate provisions on association and pluralist participa-
> tion, although some could meet generous interpretations of these
> ambiguous requirements through extensive intra–party demo-
> cracy.[46]

Welch shows his awareness of the relationship between political
democracy and human rights NGOs by prefacing Chapter 8 — on
democratization and the search for civil society in Nigeria — with a
reproduction of Article 25 of the ICCPR. He identifies the two somewhat
complementary political forces which sought the introduction of political
democracy in Nigeria.[47] Both sought in their different ways to orchestrate
political democracy in Nigeria through the deployment of human rights
discourse. The first was the government–created Centre for Democratic
Studies (CDS), which Welch generously calls a government–organized
non–governmental organization (GONGO).[48] Omo Omoruyi, a respected
political scientist, was its director.[49] Its purpose was to teach democratic
attitudes, methods, and strategies to the two sole political parties: the
National Republican Convention (NRC) and the Social Democratic Party

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45. Henry J. Steiner, *The Youth of Rights*, 104 HARV. L. REV. 917, 930 (1991).

46. *Id.* at 930–31. On the other hand, Steiner argues that although participatory norms
leave open the balance of the distribution of power in the state — as, for example, between the
majority and ethnic or other minorities — they permit political arrangements for unitary or
federal states, parliamentary or presidential systems, and bicameral or unicameral legislatures,
among others. *Id.* For views that identify political democracy with the human rights corpus, see
generally Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE
J. INT'L L. 539 (1992); Thomas M. Franck, *The Emerging Right to Democratic Governance*,
86 AM. J. INT'L L. 46 (1992).

47. Nigeria has been ruled almost exclusively by military dictatorships since independence
from Britain in 1960. *See* Anthony Goodman, *UN Panel Condemns Nigeria Executions*, CHI.
SUN-TIMES, Dec. 15, 1995, at 44. The country's latest troubles heightened in 1993 when
General Ibrahim Babangida, who had seized power in a military coup in 1985, annulled the
June 1993 presidential elections believed to have been won by Moshood Abiola. Human rights
groups, pro–democracy activists, and Abiola's supporters organized demonstrations and strikes
to protest the cancellation of the vote. In the ensuing crisis, General Sani Abacha took control
of the government and has carried out a severe and brutal crackdown on the opponents of the
regime. *See generally* HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT 1995
34–39 (1994); WELCH, *supra* note 5, at 20–28; Oji Umozurike, *Nigeria and the African
Charter*, CONST. RTS. J., Jan.–Mar. 1995, at 36.

48. At best, CDS should perhaps be classified as a quasi–governmental institution due to
its creation, sponsorship, and close association with the military junta in Nigeria. As put by
Welch, the role of the CDS was "to create a behavioral foundation for democracy among party
officials and candidates." WELCH, *supra* note 5, at 239.

49. In 1995, Omoruyi left Nigeria after an attempt on his life. He is now a visiting fellow
at the Harvard Law School Human Rights Program.

(SDP), both government–created. The SDP, "a little to the left of center," and the NRC, "a little to the right of center," would be financed by the state and have no ethnic, regional, sectional, or religious biases, cleavages that the military felt had doomed earlier attempts at democratization.[50]

This bizarre attempt to engineer an American–style political system reflected, at least in part, the association of Western political democracy and the human rights norms pertinent to political participation. This "democratization from above" was challenged by efforts at democratization from below in the form of a second force, which was composed of human rights NGOs, some trade unions, and several professional associations organized collectively under the name Campaign for Democracy (CD).[51] Soon after the annulment of the 1993 vote, the CD was successful in mobilizing mass support against the regime, but differences in strategy ultimately caused CD to collapse.[52] The Abacha regime moved quickly to disband the NRC and SDP, sideline the CDS, and carry out a widespread campaign of persecution against the CD and other opponents of the regime. Welch attributes this failure of democratization to the reluctance of the military to relinquish power, but he neglects to address the critical issue of the difficulty of democratizing a state where the elites have fragmented along regional and religious lines and cannot agree upon the rules of political competition and the orderly transfer of power. This difficulty is the vexing problem of the African post–colonial state.[53]

The linear universalization of the liberal values sought by the human rights movement appears to have been halted, at least in the near term, by the inviability of the post–colonial state. Namibia[54] is an exception. To

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50. *Id.* at 24. Officials associated with former governments were barred from seeking political office on party tickets. *Id.*

51. *See id.* at 252.

52. *Id.* at 253–54.

53. *See* Marina Ottaway, *Democratization in Collapsed States, in* COLLAPSED STATES, *supra* note 7, at 235; *see generally* Mutua, *Redraw the Map, supra* note 7.

54. Welch's analysis and description of Namibia's fledgling experiment with political democracy since its hard-won independence from South African apartheid correctly captures the success of that experiment, particularly the state's tolerance of political dissent and opposition and its open and respectful attitude toward human rights NGOs and the press. *See* WELCH, *supra* note 5, at 15–20, 179–97, 214–16. However, this seemingly successful start with the establishment of a "human rights culture" masks the inability of the state to transform the legacy of apartheid and its gross economic and social inequalities. *See* Denis Herbstein, *Jobs and Land,* AFR. REP., July–Aug. 1993, at 52. This numbing fact postpones Welch's characterization of Namibia's "success of a color–blind, democratic, and developing society [that] can teach a lesson to the world, and in particular to neighboring South Africa." WELCH, *supra* note 5, at 16. While Namibia's political trajectory is encouraging, the fortunes of its black majority remain bleak, not unlike those of several other post–independent "success" stories such as Zimbabwe or, as many in the West thought during the Cold War, Kenya.

some extent, so is Senegal.[55] Both countries seem to have defied the most crippling effects of this syndrome. However, most African countries, including Ethiopia, are caught in the quandary. The current government of Ethiopia, which came to power in 1991 after militarily defeating Mengistu Haile Mariam's Derg, has implemented an exclusionary "democratization" process.[56] Major opposition groups have been excluded by government harassment or have stayed out after failing to influence the nature of the transitional process.[57] The Tigrayan-controlled Ethiopian government, wary of past Amhara domination, has reverted to the manipulation of ethnicity to retain control. Although his description of political events is accurate, Welch fails to probe the government's refusal to compete politically; he accepts too easily the government's formal commitment to democratization.[58] Once again, the failure of the democratic project in Ethiopia points to the difficulties of democratization without

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55. In the case of Senegal, Welch should have been more wary of its formal democracy, a system that has not permitted any real competition for public office, as demonstrated by the flawed presidential vote in 1993. *See* Peter da Costa, *All the President's Men*, AFR. REP., Sept.–Oct. 1993, at 64. The state's repression of demands for self–determination or regional autonomy for the Casamance region further indicates the limits of its "democracy." *See* WELCH, *supra* note 5, at 28–34, 124–31.

56. In 1991, the Eritrean Peoples Liberation Front (EPLF) and the Ethiopian Peoples Liberation Democratic Front (EPRDF), a collection of ethno–military movements organized and dominated by the Tigrayan Peoples' Liberation Front (TPLF), and the Oromo Liberation Front (OLF), overthrew Mengistu Haile Mariam's seventeen-year rein of terror. The EPLF proclaimed Eritrea's sovereign independence from Ethiopia, and the EPRDF and the OLF formed the new government in Ethiopia. Prior to the June 1992 regional elections, disagreements between the EPRDF and the OLF led to military clashes between the two, the defeat of the OLF, and its exit from government. Other opposition groups left or were expelled from the government, leaving the TPLF in control. The government has since engaged in widespread repression of political dissent, the media, and critical human rights groups. In May 1995, the hand–picked leaders of the TPLF overwhelmingly won the national elections, officially completing the transitional process. All major opposition groups boycotted the elections. *See generally* Ottaway, *supra* note 53, at 235; Edmund Keller, *Remaking the Ethiopian State*, *in* COLLAPSED STATES, *supra* note 7, at 125; Makau wa Mutua, *An Oppressed Opposition*, AFR. REP., Nov.–Dec. 1993, at 50; Makau wa Mutua, *The New Oligarchy*, AFR. REP., Sept.–Oct. 1993, at 27; Makau wa Mutua, *The Regionalization Controversy*, AFR. REP., Sept.–Oct. 1993, at 30; Makau wa Mutua, *Democracy's Bid Fades in Ethiopia*, CHRISTIAN SCI. MONITOR, Aug. 18, 1992, at 19; Makau wa Mutua, *Ignoring the Lessons of History: Ethnocracy and Human Rights Violations in Ethiopia*, ETHIOPIAN REV., Dec. 1994, at 23; Makau wa Mutua, *Anointed Leadership*, AFR. REP., Nov.–Dec. 1994, at 30; *see also* TECOLA W. HAGOS, DEMOCRATIZATION?: ETHIOPIA (1991–1994), A PERSONAL VIEW (1995); INTERNATIONAL HUMAN RIGHTS LAW GROUP, ETHIOPIA IN TRANSITION: A REPORT ON THE JUDICIARY AND THE LEGAL PROFESSION (1994).

57. *See* Tsegaye Tadesse, *Opposition Parties Routed in Ethiopian Election*, Reuters, May 10, 1995, *available in* LEXIS, News Library, Curnws File.

58. The divisions and the political incoherence among opposition groups is no reason to give the benefit of doubt to the government. Some academics, such as Marina Ottaway, have been more critical. She has accused the government of failing to compete and dividing Ethiopia into "strangely shaped ethnic regions, the equivalent of the South African homelands." Ottaway, *supra* note 53, at 238.

the contemporaneous reformulation of the state to bequeath it with viability.

II. NGO Strategies, Dependence, and Abolitionism

The phenomenon that is known as human rights is a movement, not a monolith; within it there is a wide and contrasting variety of organizations, norms, processes, institutions, goals, and motives. At their barest, the movement's norms seek the imposition of limits on state action against the individual. However, that scope has expanded to require "positive" action by the state to lead the struggle to eliminate conditions that foster poverty, exclusion, discrimination, and other forms of powerlessness. In the hands of individuals and organizations, these norms become weapons, materiél for battle, legitimating bases for their causes. Reduced to its bare bones, the human rights corpus is the handmaiden of political operatives.

Many media and agencies are deployed in the transmission and inculcation of human rights norms. Chief among these is the United Nations, the body whose imprimatur the human rights instruments bear. Within the United Nations, there is a maze of smaller bodies and committees — official guardians — whose purpose it is to seek the creation, dissemination, and enforcement of human rights norms. Outside this "official" chamber is the second layer, the "private" realm, arguably the most important component of the human rights movement, on which the success of the movement depends. Since the target of the corpus is primarily the state, it is reasonable to suppose that human rights NGOs, the private citizens' groups, are indispensable in holding the state to its obligations. It is these groups that form the centerpiece of *Protecting Human Rights in Africa*.

Welch examines the roles of both national NGOs as well as those organizations whose mandates reach beyond national borders, the INGOs, in their efforts to spread a "human rights culture" in Africa. He explores the strategies employed by both types of organizations and advocates close cooperation between them, although he does not discuss the complexities that mark their relationship. The history and the role of INGOs in defining the character of the human rights movement and its corpus are central to understanding the internationalization of the human rights movement in general and its penetration of Africa in particular.[59] As a basis for discussing the work and styles of human rights NGOs in Africa, Welch should have paid particular attention to the contours of this relationship because

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59. *See generally* Mutua, *Domestic NGOs, supra* note 20.

the importance of these organizations cannot be overstressed; they seek to affect the fundamental character of the society and the state.

INGOs are based almost exclusively in the West even though the bulk of their work is directed at the South. Steiner aptly captures the distinction between so–called "First World" NGOs, which includes INGOs, and "Third World" national NGOs:

> In a nutshell, "First World" NGOs [both NGOs such as the American Civil Liberties Union (ACLU) and INGOs such as HRW] means those committed to traditional Western liberal values associated with the origins of the human rights movement. Many of these NGOs work exclusively within their home countries, but the "First World" category also includes most of the powerful international NGOs that investigate events primarily in the Third World.[60]

INGOs are the ideological offspring of Western domestic NGOs such as the ACLU and the National Association for the Advancement of Colored People (NAACP), including the NAACP Legal Defense and Educational Fund (LDF). Although the NAACP has also focused on questions of social and economic justice, both organizations rest their moral authority on a narrow range of civil and political rights.[61] None challenge or question the fundamental character of economic or social structures and their underlying philosophies and assumptions; they seek fair and equal treatment within the framework of the American liberal market economic arrangements. Leading INGOs such as HRW,[62] Amnesty International (AI),[63] and ICJ[64] promote similar ideals abroad.

Individuals connected to the ACLU have been prominent in the formation and development of American INGOs. Roger Baldwin, the founder of the ACLU, also founded the International League for Human

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60. HENRY J. STEINER, DIVERSE PARTNERS: NON–GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT 19 (1991).

61. The ACLU was founded in 1920 to advocate the rights of conscientious objectors and today sees itself as the defender of the Bill of Rights in the United States Constitution. *See* NORTH AMERICAN HUMAN RIGHTS DIRECTORY 19 (Laurie S. Wiseberg & Hazel Sirett eds., 1984) [hereinafter NORTH AMERICAN DIRECTORY]. The NAACP was founded in 1909 to seek equal treatment for African–Americans. *Id.* at 161.

62. HRW works to defend "freedom of thought and expression, due process and equal protection of the law." *See* HUMAN RIGHTS WATCH, *supra* note 47.

63. Amnesty International defends basic civil and political rights in the context of "prisoners of conscience," a term for individuals detained for their beliefs, ethnic origin, sex, color, or language, provided the prisoners have not advocated or used violence. *See* Statute of Amnesty International, arts. 1, 2, *reprinted in* 1995 AMNESTY INT'L REP. 327 (1994).

64. The Geneva–based ICJ was formed in 1952 as a tool for the Cold War with the support of the American CIA to advocate the rule of law. *See* WELCH, *supra* note 5, at 163.

Rights (ILHR) in 1942.[65] The ILHR in turn founded the New York–based Lawyers Committee for Human Rights, another important American INGO. Human Rights Watch, the dominant American INGO, was started in 1978 with the founding of Helsinki Watch. It was developed into prominence by Aryeh Neier, a former executive director of the ACLU.[66] Amnesty International, the world's most famous INGO, was started in London in 1960 by Peter Benenson, a British lawyer concerned with the civil liberties of those persecuted because of their opinions or beliefs.[67] In the last half century INGOs such as these have formed the heart and soul of the human rights movement, its engine of growth. They, more than any other groups, have set the agenda and scope of the worldwide human rights movement.

INGOs and their domestic American predecessors are trend-setters in the universe of human rights; it is difficult to understand human rights NGOs in the South without exploring the historical evolution and the strategies deployed by their Northern counterparts. The "leadership" of INGOs in human rights derives in large measure from the circumstances of their origin: the underlying values of the human rights movement are Western in orientation and arise from the history of the relationship between the state and the individual; INGOs benefit from the reservoir of experience accumulated by civil society organizations in the North; the freedoms and latitude were "captured" from the state by civil society organizations in industrial democracies; they derive financial, social, and moral support from philanthropists, foundations, and citizens; they enjoy access to "world" political centers such as New York, London, Washington, Paris, and Geneva; they utilize the resources and ability of United Nations and regional human rights systems; they have access to the all–powerful Western media; and they have access to and, quite often, cooperation from the arms of government concerned with foreign affairs. In contrast, even the most visible human rights NGOs in the South operate at the bare margins of these structures.

In many cases, human rights NGOs in the South have been orchestrated by NGOs and foundations from the North. The Legal Resource Centre, one of South Africa's leading human rights law firms, was founded with the support of Jack Greenberg, former director–counsel of

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65. *See* NORTH AMERICAN DIRECTORY, *supra* note 61, at 135–36.

66. *See* Aryeh Neier, *Political Consequences of the United States Ratification of the International Covenant on Civil and Political Rights*, 42 DEPAUL L. REV. 1233, 1233 (1993).

67. Ian Martin, *The New World Order: Opportunity or Threat for Human Rights*, Address Before the Harvard Law School Human Rights Program 4–5 (April 14, 1993) (published by Harvard Law School Human Rights Program) (on file with *Michigan Journal of International Law*).

LDF.[68] The Ford Foundation been one organization which has provided crucial financial support for countless human rights NGOs in the South.[69] As this author has argued elsewhere, these relationships translate into "copycat" human rights NGOs in Africa:

> Many of the new groups [human rights NGOs] were orchestrated, funded and supported or at the very least deeply influenced by individuals, human rights organizations, and foundations from the North. It is little wonder that most African human rights organizations echo AI, HRW and ICJ in mandate, structure and methods of work. They monitor, document and publicize human rights conditions à la AI and HRW. But they also train paralegals and carry out educational and rights awareness campaigns such as those promoted by the ICJ. Many of them are miniature replicas of their more powerful counterparts in the North: they are funded by the same sources, they are organized similarly with almost identical mandates and use similar tactics and strategies of advocacy and work.[70]

The implications of this dependent relationship often mean that African human rights NGOs cannot freely pursue their own agendas or survive over the long term, problems that Welch identifies.[71] More seriously, African NGOs run the risk of downgrading economic and social rights and the structural problems that are the root causes of human rights abuses if they draw too much from INGOs.[72] Welch recognizes the danger of this lopsided approach and devotes Chapter 9 to a discussion of the role that human rights NGOs can play in the quest for economic and social rights. He correctly argues that human rights will remain elusive unless underdevelopment in rural Africa, where the majority of the people live, is overcome.[73] He decries the emphasis which powerful human rights NGOs place on urban areas at the expense of "development" organizations which operate in the countryside.

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68. *See* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, PUBLIC INTEREST LAW AROUND THE WORLD 1 (1992).

69. *See generally* 1994 FORD FOUND. ANN. REP. (1995).

70. Mutua, *Domestic NGOs, supra* note 20, at 31.

71. *See* WELCH, *supra* note 5, at 294, 303. I have concluded elsewhere that "[t]here is no future for the human rights movement in Africa unless it can secure domestic ideological, financial and moral support from interested constituencies. An externally funded and directed movement cannot address the needs of Africans much less be integrated into the fabric of society." Mutua, *Domestic NGOs, supra* note 20, at 32.

72. For an excellent discussion of the mandates of INGOs and their critiques by activists from the South, see STEINER, *supra* note 60, at 17–39.

73. WELCH, *supra* note 5, at 265.

Welch admires "pioneer" activists such as Molly Melching, a former American Peace Corps volunteer, who returned to a Senegalese village to start an "enabling" and "empowerment" program.[74] The program is built around teaching basics — reading, writing, and farming — to Senegalese villagers through their own language and culture. The externally–funded program was intended to combat discriminatory gender attitudes and poverty and to increase rights awareness. Although Melching's program arguably has merit, the image of Americans "teaching" Africans their own culture is disturbing to the extent that it encourages external dependence and creates the impression of whites "rescuing" hapless Africans. In any event, it is doubtful whether externally–funded programs are the answer to Africa's "rural problem." Genuinely empowering programs would have been enterprises run by Africans with local resources to address problems associated with rural powerlessness. Outsiders are certainly an important element of Africa's problems and solutions to its crises, but care needs to be taken not to present them as "saviors"; entities as diverse as the World Bank and European missionaries have claimed that mantle to no avail.

The strategies deployed by NGOs pose other problems. Human rights NGOs, especially in the West, often see themselves as modern–day abolitionists whose purpose is to spotlight an evil and advocate its eradication. Choices are cast in sharp relief, with no middle ground or moral dilemma. The human rights movement's reliance on moral outrage as a mobilizing technique requires moral certainty about the "bad" that the "good" of the movement must overcome. Perhaps in no other example does Welch bring this conflict out more clearly than in his discussion of women's rights and genital operations on women.[75] He focuses on the work of the Inter–African Committee on Traditional Practices Affecting the Health of Women and Children (IAC), a Geneva–based group that seeks the elimination of harmful practices such as genital operations.

The IAC is the animating force behind a collection of national committees and international agencies that work to combat genital surgeries in a number of African countries. Berhane Ras–Work, an Ethiopian, has been its key figure. Initially, the IAC was formed as a response to what some African women deemed paternalistic and racist depictions of practices labeled female genital mutilation (FGM) by Western feminists. Although African women and Western feminists both

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74. *See id.* at 266–73.

75. Welch devotes one chapter to the use of education as a tool for long–term social change in relation to "traditional" practices, women's rights and genital operations on women, and the critical role that he carves out for education in combatting this practice. *Id.* at 88–106.

opposed female genital operations, the two differed on the appropriate terminology and the meanings that could be rendered by particular descriptions.[76] Fran Hosken, the American feminist, became notorious for her searing, dramatic descriptions and pictorial depictions of the practice.[77] Many Africans found her offensive and patronizing.[78]

Welch recognizes the educational work of IAC and that of Irene Thomas, the Nigerian partner of IAC, but he creates the impression that were it not for Hosken and her fellow Westerners the subject of genital operations would have remained "hidden." The picture of an Africa repressive, or ignorant, enough to "deliberately" inflict suffering on its own women is perhaps the unwitting residue of Welch's otherwise important discussion of a critical subject. Thus, while an abolitionist approach is useful in rallying forces against abuses, it could be a double-edged sword: human rights advocates should not leap with missionary zeal across the treacherous cultural divide. Doing so may be construed as an attempt to impose unwanted alien values on others, a charge that could significantly blunt efforts to construct a universal human rights corpus.

Welch tackles the strategy of empowerment in the context of the explosive claims of the group right to self-determination. He concentrates his attention on the volatile cases of the Ogoni in Nigeria, the Oromo of Ethiopia, and Senegal's Casamance region.[79] Welch traces the problem of ethnic group rights to the haphazard chiseling of the colonial state out of various pre-colonial nations, and he treats claims for autonomy regimes or secession as a direct result of the cultural and political incoherence of the African state. He does not, however, question the overall viability of the post-colonial state. He states that "cut-throat competition for economic and political power encourages persons to turn to the primordial sentiment of kinship,"[80] an assertion that incorrectly implies an African uniqueness in addressing competing nationalist claims and sentiments. In treating

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76. The characterization of genital operations has been the subject of much controversy. Names for the practice range from female circumcision to genital mutilation. Some Africans and non-white Western women have assailed the depictions of African women in literature and other visual impressions of genital surgeries as racist, paternalistic, and culturally insensitive. *See, e.g.,* Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide,* 8 HARV. HUM. RTS. J. 1 (1995). For an African critique of Western feminism, see Joseph Oloka–Onyango & Sylvia Tamale, *"The Personal is Political," Or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism,* 17 HUM. RTS. Q. 691 (1995).

77. *See* WELCH, *supra* note 5, at 92. Welch describes her as "a forthright American crusader for women's rights who was well–informed." *Id.*

78. *See id.* at.103–04.

79. *Id.* at 107–39.

80. *Id.* at 117.

ethnically–based political groups as human rights organizations, Welch breaks with traditional Western human rights approaches which have not treated such groups as part of the human rights universe.[81] Although his examination is not one of the norm or the pertinent international law, Welch "authenticates" the use of human rights norms to seek the resolution of competing ethnic–based claims within the post–colonial state.

In addition, each of the three cases addressed by Welch has a defining characteristic that galvanized the specific people to coalesce demands for autonomy or secession. For the Ogoni, who occupy an oil–rich area of Nigeria, resentment for the ecological devastation of their lands and environment by oil companies and an abusive, authoritarian government rallied them against the state.[82] The failure of the state to share oil revenues with the Ogoni aggravated that contradiction and heightened the demands for autonomy. The Movement for the Survival of the Ogoni Peoples (MOSOP), under the leadership of acclaimed author Ken Saro–Wiwa, drew international support because of its able use of international fora, the stature of Saro–Wiwa, Nigeria's pariah status, and the international sympathy generated by the oil companies' abuse of the environment. The government appeared determined to silence MOSOP and end the threat it posed to the state and to the oil industry. In May 1994, Saro–Wiwa and other MOSOP activists were arrested for the suspicious murders of pro–government Ogoni leaders[83] and were executed eighteen months later after a trial that international observers condemned as unfair.[84] Welch captures well the struggle by the Ogoni and the state's intransigence although he does not bring out fully the government's determination to terminate, by any means necessary, the MOSOP threat.[85]

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81. INGOs and Western human rights academics have not, as a general rule, treated liberation movements such as the African National Congress (ANC) of South Africa or the South West African Peoples Organization (SWAPO) of Namibia as human rights groups despite the fact that such groups have sought to vindicate the right to self–determination, which is in my view the most fundamental of all human rights. They see such groups as "political" organizations and not human rights NGOs, which they believe should be "neutral," "apolitical," or "non–partisan." To them a group is a human rights NGO only if it is not directly involved in the contest for state power, does not seek to form government, is not directly linked to a particular political party, and primarily uses human rights standards as a basis for its advocacy. *See* STEINER, *supra* note 60, at 5–15, 61–76 (discussing the characteristics of human rights NGOs). I do not think the hazy distinctions drawn by INGOs are helpful; they still leave open why certain groups are not categorized as human rights NGOs.

82. *See* HUMAN RIGHTS WATCH/AFRICA, THE OGONI CRISIS: A CASE STUDY OF MILITARY REPRESSION IN SOUTHEASTERN NIGERIA (1995).

83. *Id.* at 14.

84. *Nigerian Executions Allow No Defense*, N.Y. TIMES, Dec. 14, 1995, at A30.

85. *See* WELCH, *supra* note 5, at 111–16.

Senegal has not been much better about dealing with autonomy claims for the Casamance region. Its brutal suppression of the Diola, the dominant people in the region, and the Mouvement Démocratique des Forces Casamançais (MDFC), their political organ, has shown the state's inflexibility in addressing autonomy regimes for minorities or other groups seeking a special status within the state.[86] The impulse of the African post–colonial state has been to suppress demands for group autonomy even in cases where high degrees of cultural and national consciousness defined a people.

The post–Mengistu state in Ethiopia has, however, departed from open hostility to the explicit recognition of nationality differences in the reconstruction of the state.[87] Its new administrative regions are organized by ethnicity, ostensibly transferring power to the local people. This approach was necessitated by the policies of past regimes which sought the destruction of other cultural heritages and their replacement with the dominant Amhara language and tradition.[88] As a result, the new Ethiopian constitution provides that "every nation, nationality and people in Ethiopia has an unconditional right to self–determination, including the right to secession."[89] This approach has proven unsatisfactory because the government did not mean what it said. According to Keller:

> Contrary to EPRDF's [ruling party] expectation, this new approach to dealing with the national question did little to placate the yearnings of the various nationality groups for their assumed rights to self–determination. In fact, the initiative had the opposite effect, broadening and deepening ethnic tensions.[90]

The Oromo, who constitute about half of Ethiopia's population, and have traditionally been excluded from the political mainstream by the Amhara and the Tigrayans, have in particular pushed for a separate state. Keller again notes that:

> Some among the Oromo, for example, had their expectations heightened that these reforms could eventually position the Oromo people to declare their independence from Ethiopia. Elements of the OLF had long hoped to establish the independent state of Oromia. However, it was clear that the EPRDF–led government intended regional

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86. *Id.* at 124–30.
87. *See* Keller, *supra* note 56.
88. *Id.*
89. *See* ETH. CONST. art. 39(1), *reprinted in* HAGOS, *supra* note 56, at 304, 315.
90. Keller, *supra* note 56, at 135.

Michigan Journal of International Law   [Vol. 17:591

autonomy to mean *only within the context of a united Ethiopia —
a form of federalism.*[91]

Rather than honor its commitment to democratic reform and
self–determination for various groups, the government has instead
embarked on a policy of repressive rule to squelch all opposition to its
rule.[92] Welch holds out hope that there is a middle ground between
MOSOP, the OLF, and the MFDC on the one hand, and their governments
on the other; he thinks their calls for self–determination amount to a
zero–sum game.[93] Instead, he advocates "mutual accommodation, through
dividing or decentralizing power."[94] But how can powers be devolved in
an authoritarian, undemocratic state that seeks firm central control within
the unitary state or, in the case of Ethiopia, a state that hypocritically
"commits" itself to ethnic self–determination? Or Nigeria, with its false
"federal" structures? Perhaps the Ethiopian approach may offer some hope
if carried to its logical conclusion. As this author has argued previously,
the map of Africa must be redrawn by reconceptualizing the uses of the
group right to self–determination.[95] Perhaps this approach may give
viability to the African state and arrest its demise — a situation, which
I see as inevitable under its current configuration.

CONCLUSION

Professor Welch's valuable work, although admittedly undertaken from
a "sympathetic"[96] perspective, addresses a very broad subject about which
there has been little scholarly writing. Few academics have devoted time
to the study of the phenomenon of human rights NGOs in Africa. In this
respect, it will have a lasting impact as the first major work in the area.
But it is precisely for those reasons that *Protecting Human Rights in
Africa* will be subjected to close scrutiny. As I have sought to emphasize
in this review, the field of human rights in Africa is strewn with political

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91. *Id.* (emphasis added).

92. *See* AMNESTY INTERNATIONAL, ETHIOPIA – ACCOUNTABILITY PAST AND PRESENT:
HUMAN RIGHTS IN TRANSITION (1995). The government of Ethiopia has engaged in the focused
persecution of the Ethiopian Human Rights Council (EHRCO), arguably the most independent
human rights NGO in the country, and its leader, Mesfin Wolde Mariam. *See* WELCH, *supra*
note 5, at 217–18; *see generally* DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS
PRACTICES FOR 1994 (1995).

93. *See* WELCH, *supra* note 5, at 131.

94. *Id.*

95. Mutua, *Redraw the Map, supra* note 7.

96. WELCH, *supra* note 5, at xi.

mines; the human rights movement's agenda is a complex package. Given the continent's history of bombardment by various types of dominant ideologies, it is essential that the movement be probed more critically than Welch does.

The deployment and manipulation of human rights norms and images by Africans or by outsiders in Africa must be sobered by the realization that the human rights corpus seeks to vindicate visions of a particular political society. Even if the argument, which I advance, that human rights law requires the reconstruction of societies to reflect versions of liberal democracy is accepted, the precise nature of that political democracy still remains an open question. Africans must be exposed to these dilemmas as they choose, to use, or to reject, the human rights idiom as the midwife for a new society. They must also choose how values from the pre–colonial past fit into a scheme for liberating their societies within this idiom, an issue Welch does not address.[97] The human rights crusade should not be presented, as I think Welch does, as a civilizing mission, a project to replace offensive norms and debilitating cultural practices with "humane" values. If human rights are pursued as a campaign of tutelage — in which Africans are little more than robots — its redeeming quality will be lost.

Domestic human rights organizations, which are vital for Africa, cannot continue to be isolated outposts for the spread of Western liberal values. They must not be animated primarily by the abolitionist impulse; they must become an integral part of the cultural fabric of African societies and take the lead in the reformulation of the human rights corpus to make it a tool in the reconstruction of a viable African state.[98]

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97. For the pre–colonial ideals relevant for the reformulation of the human rights corpus to make it relevant to Africa, see Mutua, *Cultural Fingerprint, supra* note 4; *see also* Josiah Cobbah, *African Values and the Human Rights Debate: An African Perspective,* 9 HUM. RTS. Q. 309 (1987).

98. *See generally* Mutua, *Cultural Fingerprint, supra* note 4.